IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8567 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANUBHAI DAHYABHAI PATEL

Versus

RAMBHAI RANCHHODBHAI PATEL SINCE DECD. THRO L.R.

Appearance:

1. Special Civil Application No. 8567 of 1991

MR AJ PATEL for Petitioner No. 1

MR AS VAKIL for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 07/04/2004

ORAL JUDGEMENT

#. By this petition under Article 227 of the Constitution, the petitioner has called in question the order of the Mamlatdar & ALT in Tenancy Case No. 7B/995/85, the order of the Deputy Collector in Tenancy Appeal No. 253/85 and the order of the Gujarat Revenue

Tribunal in Review Application No. TENOA 898/86, in each of which, the case of the petitioner to the effect that he was tenant of the agricultural land of the respondent, was not believed. The last order in revision clearly held that no case was made out to remand the matter back for re-appreciation of evidence, because, the evidence on record was found to have been properly appreciated by each of the authorities.

#. The learned counsel for the petitioner vehemently argued that, the Tribunal had failed to exercise jurisdiction vested in it, since, under the provisions of Section 76(1)(c) of the Bombay Tenancy & Agricultural Lands Act, 1948, the Tribunal had jurisdiction to prevent the miscarriage of justice if error was committed in appreciating important evidence. It was sought to be pointed out from the evidence on record that, the respondent himself had approached the Civil Court for securing possession of the land in question and had failed to establish his case before the Civil Court. On the other hand, the petitioner had led oral and documentary evidence in support of the contention that the petitioner was a concealed tenant although no documentary evidence formalising the tenancy could be produced because of the concealed nature of relations. The learned counsel heavily relied upon the pieces of documentary evidence placed on record in the form of the panchnama executed for the purpose of the Civil Suit filed by the respondent, the statement of accounts maintained by the owner of the tractor with which the land in question was supposed to have been tilled, the statement of accounts maintained by one witness, as also the copies of the receipts and other documents from the Irrigation Department. It was on that basis submitted that, the petitioner had proved beyond reasonable doubt that he was cultivating the land and tenancy could be infered therefrom.

#. In view of the above submissions, the original evidence as referred on behalf of the petitioner was perused and it was found that far from there being any conclusive evidence of tenancy, most of the evidence was not even related to the land in question. The oral evidence heavily relied upon by the petitioner was discussed and duly discarded by the Mamlatdar & ALT in its order. There are even findings to the effect that the petitioner had gone to the length of concocting evidence in order to prove his possession. Thus, in short, the finding of fact arrived at by the reviewing authorities could not be said to be in any way perverse or illegal. The argument that the Tribunal had failed to

exercise its jurisdiction by not interfering with the concurrent findings of fact is, therefore, misconceived. No other legal ground is made out to interfere with the impugned order in exercise of extraordinary jurisdiction of this Court under Article 227 of the Constitution. Judgment of this Court in Punjabhai Devabhai Rathod & others V/s. State of Gujarat [1987 GLH, 70], relied upon by the petitioner has no application in the facts of the present case. The petition is, therefore, rejected, Rule is discharged with no order as to costs and interim relief is vacated.

[D.H. WAGHELA, J.]

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